IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1322 (MS) OF 2004

Sri Jayant Kumar Sharma, son of Sri Mathura Dutt Sharma, resident of Ghas Mandi, Bareilly Road, Haldwani, District Nainital. .....Petitioner.

Versus

Smt. Naseem Bano, wife of Sri Akil Ahmad, through Special Power of Attorney Sri Akil Ahmad, son of Sri Johar Ahmad, resident of Maken No. 9-537, Ghas Mandi, Bareilly Road, Haldwani, District Nainital. .....Respondent.

Dated: 20.12.2004

Counsel for the petitioner, Sri Siddhartha Sah.

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 16th December, 2004 passed by the District Judge, Nainital in Misc. Civil Appeal No. 26 of 2004 Jayant Kumar Sharma v. Smt. Naseem Bano and the order dated 30.09.2004 passed by the Court of Civil Judge (Junior Division) Haldwani, District Nainital in Civil Suit No. 1 of 2002 Smt. Naseem Bano v. Jayant Kumar Sharma.

Briefly stated, the suit was filed by the plaintiff/respondent praying for a permanent injunction not to interfere with the construction work in disputed gali shown in the map as अ, ब, स, द।

Along with the suit the plaintiff has filed an application for temporary injunction under Order 39 Rule 1 C.P.C.

Both the courts below have granted the injunction in favour of the plaintiff.

Counsel for the petitioner has submitted that the Gali in question is not in the ownership of the plaintiff and he has no concern with the same and as such no injunction can be granted in his favour so as to restrain the defendant from making any construction. The injunction suit was filed in the year 2002 since then the injunction is operating. Two courts below have already granted the injunction, the appeal was also dismissed by appellate court.

In view of the aforesaid findings, no interference is required under Article 226 of the Constitution of India so as to disturb the findings recorded by the two courts below.

Since the question of ownership is involved, and the suit being of 2002, it is desirable in the interest of justice that the suit itself may be disposed of by learned Judge by 31st January, 2005.

The findings recorded by the court below will not prejudice the presiding officer while deciding the case on merits.

Petitioner has submitted that he has also filed the counter claim in the suit, suffice it to state that the same shall be taken into account in accordance with law.

Subject to the aforesaid observations, the writ petition is disposed of.

20.12.2004 (RAJESH TANDON, J.)

P.S.R.